

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

JOSEPH YACISEN,

Plaintiff/Counter-Defendant-  
Appellee,

v

CHARLES WOOLERY, a/k/a RUN RITE AUTO,  
a/k/a RUN RITE CLASSICS

Defendant/Counter-Plaintiff-  
Appellant.

UNPUBLISHED  
May 30, 2013

No. 308310  
Roscommon Circuit Court  
LC No. 08-727668-PD

---

Before: RONAYNE KRAUSE, P.J., and GLEICHER and BOONSTRA, JJ.

PER CURIAM.

Joseph Yacisen purchased a 1970 Pontiac GTO Judge for \$11,300. Charles Woolery, the owner of Run Rite Classics,<sup>1</sup> agreed to restore the car to its original condition. According to Yacisen, Woolery quoted a \$50,000 price and promised that the job would be completed within one year.

The restoration did not go well. Woolery revised the price upward and Yacisen stopped paying Woolery's bills. Three years into the project, the parties signed a written contract calling for completion of the work by September 4, 2008. Despite the contract, the parties quarreled over parts and materials, and the car remained unfinished. Yacisen filed suit. After two days of trial the contestants placed a settlement on the record. The circuit court subsequently entered a "stipulated order for dismissal" providing that "[i]n the event of any dispute," the parties would arbitrate their differences.

Not surprisingly, a dispute arose. The circuit court set aside the settlement and the stipulated order of dismissal and entered a judgment favoring Yacisen. We discern no legal basis for setting aside the settlement or stipulation and reverse with an instruction that the parties proceed to arbitration.

---

<sup>1</sup> Run Rite Classics is also known as Run Rite Auto.

## I. FACTS AND PROCEEDINGS

In November 2007, the parties negotiated and entered into a written contract providing that Woolery would complete the GTO's restoration work under specified terms and conditions, including that the finished product would be ready "no later than [September 4, 2008] absent an act of God." In December 2008, Yacisen filed a complaint asserting claims for breach of contract, unjust enrichment, and claim and delivery.

In October 2010, the parties commenced a bench trial. Yacisen completed his proofs on the first trial day; Woolery's testimony remained unfinished. The next morning, counsel for the parties announced a settlement. During a lengthy colloquy with the court, counsel placed the settlement terms on the record. The trial court then took testimony from Yacisen and Woolery, confirming their agreement with the settlement and its conditions. On November 30, 2010, the circuit court entered a stipulated order for dismissal providing in relevant part as follows:

6. In the event of any dispute between the parties, the parties will select a mutually agreeable, third-party arbitrator, or in the event the parties cannot agree on an arbitrator, the parties may motion to re-open this case and the Court will appoint an arbitrator or special master of its own choosing. The judgment rendered by any arbitrator or special master appointed by the Court will be enforceable through the Roscommon County Circuit Court. The decision of said arbitrator or special master will be final and binding, and the parties hereby waive their appeal rights thereto.

In August 2011, Yacisen filed a "motion for enforcement of settlement agreement/appointment of arbitrator." In November 2011, the circuit court commenced an evidentiary hearing in which Yacisen and Woolery testified. Characterizing the matter as "the case that won't go away," the court continued:

The problem is that these two people are never going to agree. It is like the two individuals trying to paint the rubber ball bouncing down the hill, one wants to put stripes on it, one wants to put polka dots on it. And because it is a moving ball and it is going down the hill, neither one is going to get the stripes on it or the polka dots on it.

But what we did is we had a day of testimony and it is all memorialized in the transcript. Then we have a transcript, and the transcript of the settlement encompasses twenty-two pages, almost twenty-three pages. And it said this is what it is going to be and this is what it is going to do.

Then we have the actual written agreement. And the written agreement doesn't in any way conform to the transcript that was put in and the Court had colloquy in that and asked the lawyers – Mr. Woolery was present, Doctor Yacisen was present. And so immediately after that, things went downhill again.

\* \* \*

So what I am going to do is this – and this is the final order and this resolves all the disputes. I am setting aside the settlement agreement because Mr. Woolery’s understanding of it and the doctor’s were not the same.

The court then ruled that Woolery had breached the parties’ 2007 contract and fashioned a detailed remedy. Woolery now appeals.

## II. ANALYSIS

The stipulated order of dismissal entered by agreement of the parties represents a contract. Unambiguously, the parties agreed that “any” future disputes would be arbitrated. While MCR 2.612(C)(1)(a) permits the court to set aside a judgment on the grounds of “mistake, inadvertence, surprise or excusable neglect,” none of those conditions existed here.

If the language of a judgment is unambiguous, we interpret it de novo as a question of law. *Holmes v Holmes*, 281 Mich App 575, 587; 760 NW2d 300 (2008). Likewise, “[t]he proper interpretation and application of a court rule is a question of law, which we review de novo.” *Henry v Dow Chem Co*, 484 Mich 483, 495; 772 NW2d 301 (2009). We review for an abuse of discretion a circuit court’s ultimate decision to grant or deny relief from a judgment. *Yee v Shiawassee Co Bd of Comm’rs*, 251 Mich App 379, 404; 651 NW2d 756 (2002).

A settlement agreement made in open court is a contract. *Michigan Mut Ins Co v Indiana Ins Co*, 247 Mich App 480, 484; 637 NW2d 232 (2001). “A contract is said to be ambiguous when its words may reasonably be understood in different ways.” *Raska v Farm Bureau Mut Ins Co of Mich*, 412 Mich 355, 362; 314 NW2d 440 (1982). The stipulated order for dismissal also is contractual, and is brief, concise, and admits of no ambiguity. The words may be understood to mean exactly what they say: *any* dispute must be arbitrated. Accordingly, we consider whether the trial court correctly set aside this unambiguous agreement.

MCR 2.612(C)(1) authorizes a court to relieve a party from a final judgment on the following grounds:

- (a) Mistake, inadvertence, surprise, or excusable neglect.
- (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).
- (c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.
- (d) The judgment is void.
- (e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.
- (f) Any other reason justifying relief from the operation of the judgment.

“Well-settled policy considerations favoring finality of judgments circumscribe relief under MCR 2.612(C)(1).” *Rose v Rose*, 289 Mich App 45, 58; 795 NW2d 611 (2010).

The trial court determined that there was no meeting of the minds as to the essential terms of the settlement agreement. The court further specifically invoked MCR 2.612(C)(1)(a) and MCR 2.612(C)(1)(c), finding without explanation that there was “mistake, inadvertence and surprise,” as well as “fraud or other misconduct.” The court reached this conclusion by comparing the testimony offered at the time the parties placed the settlement on the record with the language of the agreement their counsel subsequently signed. However, whether there has been a meeting of the minds “is judged by an objective standard, looking to the express words of the parties and their visible acts.” *Groulx v Carlson*, 176 Mich App 484, 491; 440 NW2d 644 (1989). In other words, in assessing whether a contract was formed, we examine the contract rather than exploring the hopes or beliefs of the parties. That Yacisen and Woolery may not have subjectively shared an identical understanding of the terms of their settlement matters not, particularly given their clear, straightforward pledge that an arbitrator or special master would resolve future disputes. Nor does it give rise to mistake, inadvertence, surprise, fraud, or other misconduct.

Thus, we find in MCR 2.612(C) no ground to rescind the settlement agreement. Yacisen’s apparent post-judgment regret that he agreed to arbitrate “any disputes,” notwithstanding his prejudgment covenant that the trial court enforce the settlement agreement by appointing an arbitrator, does not qualify as a “mistake” under MCR 2.612(C)(1)(a). “MCR 2.612(C)(1)(a) was not designed to relieve counsel of ill-advised or careless decisions.” *Limbach v Oakland Co Bd of Comm’rs*, 226 Mich App 389, 393; 573 NW2d 336 (1997) (quotation marks and citation omitted). Nor does it qualify as any other grounds for relief under MCR 2.612(C)(1)(a) or MCR 2.612(C)(1)(c). “[A] unilateral misunderstanding of the legal effect of an instrument is not a sufficient ground for reformation[,]” or for rewriting a settlement agreement. *Theophelis v Lansing Gen Hosp*, 430 Mich 473, 493; 424 NW2d 478 (1988). The trial court abused its discretion by setting aside the settlement and the stipulated order of dismissal and by failing to order the parties to arbitration, as required by the parties’ contract.

Reversed and remanded for arbitration proceedings consistent with the stipulated order of dismissal. We do not retain jurisdiction.

/s/ Amy Ronayne Krause  
/s/ Elizabeth L. Gleicher  
/s/ Mark T. Boonstra